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14 **UNITED STATES DISTRICT COURT**
15
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 BANA MOUWAKEH,

18 Case No. 15CV2372 W (KSC)

19 Plaintiff,

20 v.

21 COUNTY OF SAN DIEGO, San Diego
22 Sheriff BILL GORE, San Diego
23 Sheriff's Deputy STEVEN DUNNING,
24 San Diego Sheriff's Deputy
25 AUGUSTIN ROSAS, JR., San Diego
26 Sheriff's Deputy YVAN ROGERS, and
DOES 1-10, inclusive,

27 Defendants.

28
**FIRST AMENDED COMPLAINT
FOR DAMAGES AND VIOLATIONS
OF CIVIL RIGHTS**

DEMAND FOR JURY TRIAL

21 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

22 Plaintiff BANA MOUWAKEH hereby files the following First Amended
23 Complaint for Damages and Violations of her federal Civil Rights against
24 Defendants COUNTY OF SAN DIEGO, San Diego Sheriff BILL GORE, and
25 SDSO deputies AUGUSTIN ROSAS, JR., STEVEN DUNNING and YVAN
ROGERS and DOES 1-10, inclusive.

26
27 **JURISDICTION AND VENUE**
28

This Court has subject matter jurisdiction over Plaintiffs' federal Constitutional claims brought under Title 42 United States Code ("U.S.C.") section 1983 under 28 U.S.C. sections 1331, 1343(1), (2), (3), and (4). and 2201. Venue in this Court is proper because the acts complained of occurred in the County of San Diego, which is located in the Southern District of California.

This action at law for money damages arises under Title 42 U.S.C. Section 1983 and the United States Constitution, the laws of the State of California and common law principles to redress a deprivation under color of state law of rights, privileges and immunities secured to Plaintiffs by said statutes, and by the First, Fourth, and Fourteenth Amendments of the United States Constitution.

PARTIES

1. Plaintiff BANA MOUWAKEH is a United States citizen who, at all times relevant to this Complaint, resided in the County of San Diego.

2. Defendant COUNTY OF SAN DIEGO (hereinafter "COUNTY") is a municipal corporation duly organized under the laws of the State of California located in the County of San Diego. The San Diego Sheriff's Department (hereinafter "SDSO") is the chief law enforcement agency of the COUNTY.

3. At some times relevant to this Complaint, Defendant BILL GORE was the Sheriff of the SDSO and a policy-maker.

4. At all times relevant to this complaint, Defendant STEVEN DUNNING was a deputy Sheriff with the SDSO and an employee of the COUNTY. At all times mentioned herein, Defendant DUNNING acted under color of authority and pursuant to the course and scope of his employment and/or agency with the COUNTY.

5. At all times relevant to this Complaint, Defendant AUGUSTIN ROSAS, JR. was a deputy Sheriff with the SDSO and an employee of the COUNTY. At all times mentioned herein, Defendant ROSAS acted under color of authority and pursuant to the course and scope of his employment and/or agency

with the COUNTY.

6. At all times relevant to this Complaint, Defendant YVAN ROGERS was deputy Sheriff with SDSO and an employee of the COUNTY. At all times mentioned herein, Defendant ROGERS acted under color of authority and pursuant to the course and scope of his employment and/or agency with the COUNTY.

7. Defendant DOES 1-10 is unknown, corporations, municipalities, and/or other legal entities whose true names, identities and capacities are unknown at this time.

8. Plaintiff is informed, believes, and thereon alleges, that each of said fictitiously named DOE Defendants is responsible in some manner for the acts, omissions, and damages alleged herein. Plaintiff is unaware of the true names and capacities of the DOE Defendants, and, therefore, sues these Defendants under such fictitious names. Plaintiff is furthermore informed, believes, and thereon alleges, that each of said fictitiously named Defendants was the agent, servant, and employee, of each and every other Defendant acting within the course and scope of his or her agency and employment, and with the knowledge, ratification, and consent, of each respective principal. Plaintiff will seek leave to amend this Complaint when their true names and capacities have been ascertained.

GOVERNMENT LIABILITY

9. Plaintiff alleges that all Defendants carried out the acts complained of in their individual and official capacities, in the course and scope of their employment, and under color of law. All individual Defendants are sued both in their individual and official capacities.

10. Regarding all actions and causes of action herein alleged and stated, all governmental defendants (including all DOE defendants) violated rights held by Plaintiff that were clearly established and which they had a mandatory duty to uphold. No reasonable official similarly situated to any of the Defendants could have believed that his/her conduct was lawful or within the bounds of reasonable

1 discretion. All individual Defendants, including all individual DOE Defendants,
2 thus lack immunity from suit or liability. This extends both to statutorily created
3 immunity and to the judicially created doctrine of “qualified immunity”.

4 11. Defendant CITY is also liable for the violations of Plaintiffs’ federal
5 constitutional rights brought under 42 U.S.C. section 1983 based upon Plaintiffs’
6 *Monell* cause of action. The bases for the CITY’s liability in this context include,
7 but are not limited to, the SDSO’s supervisors’ and policy-makers ratification of
8 the illegal and unconstitutional conduct of their subordinate SDSO officers, and the
9 fact that the violation of Plaintiff’s rights was the result of an actual or *de facto*
10 policy that encouraged and/or tolerated the violations of citizens’ rights by SDSO
11 officers. This liability is direct and is based on the causes of action brought against
12 the policy-making Defendants (to wit, current SDSO Chief BLL GORE in said
13 Defendant’s official capacity.

14 12. Plaintiff is informed and believes and, on the basis of such information
15 and belief, alleges that Defendants COUNTY, GORE, and DOES 1-10, with deliberate
16 indifference, gross negligence, and reckless disregard for the safety, security, and
17 constitutional and statutory rights of Plaintiff and all persons similarly situated,
18 maintained, enforced tolerated, permitted, acquiesced in, and applied policies,
19 practices,

20 or customs or, amongst other things:

21 a. Subjecting citizens to unreasonable and outrageous seizures of their persons;
22 b. Selecting, retaining, and assigning deputies with demonstrable
23 propensities for excessive force, violence, and other misconduct; Specifically, Sheriff
24 GORE defending an SDSO deputy’s use of a Taser on 13-year-old Jeremy Banks;
25 Specifically, Sheriff GORE taking no action against SDSO deputies who falsely
26 arrested 61 year-old cancer patient Deborah Little; Specifically, Sheriff GORE
27 denying there was a lack of training of SDSO Deputy Jeffrey Grey who attacked a
28 man with Downs’ Syndrome; specifically, Sheriff GORE condoning SDSO Deputy

1 Jeffrey Cruz's beating of a patron of Harrah's California Resort when the man was in
2 handcuffs; specifically, Sheriff GORE condoning the repeated tasering of citizen
3 Marcial Torres to the point he went into cardiac arrest and had to have both legs
4 amputated. GORE conducted no internal investigation and Deputy Haddad was
5 returned to regular duties; Specifically, GORE condoning a false arrest committed by
6 SDSO Deputy Jason Philpot, which was ultimately dismissed by a judge. Philpot had
7 repeatedly punched the citizen in the face and fractured the eye socket. GORE
8 promoted Philpot to the Sheriff's training division, which instructs deputies on use of
9 force; Specifically, in 2003, Deputy Jeffrey Jackson admitted to stalking a woman
10 who sued the deputy after he shot and killed her husband. Despite multiple
11 excessive-force lawsuits, Jackson remained on duty through Sheriff Bill Gore's
12 appointment in 2009; Specifically, in 2009, Deputy Marshall Abbott, responding to
13 a noise complaint, entered a home without a warrant to find roughly 40 people
14 attending a Democratic Party fundraiser. After exchanging heated words with the
15 host, Abbott threw her to the ground, causing injuries. Despite a lawsuit that
16 resulted in a \$1.2 million settlement, Abbott remained on duty, only to be hit in
17 2011 with another excessive-force lawsuit; Specifically, in 2011, Deputy Jason
18 Philpot was the subject of an excessive-force lawsuit. The plaintiff accused him of
19 bringing false criminal charges which were eventually dismissed by a judge.
20 Shortly after, Philpot repeatedly punched a man in the face, fracturing his eye
21 socket. Similarly, a jury acquitted the man of a resisting arrest charge. During this
22 time, Philpot maintained a public MySpace page under the name "Knuckle
23 Sandooch" and included a drawing of a law enforcement officer that read: "I'm
24 going to kick your ass AND GET AWAY WITH IT." His occupation was listed as
25 "Waste Management." After the excessive-force incident, Philpot was promoted to
26 the sheriff's training division, which instructs deputies on use-of-force tactics;
27 Specifically, in 2011, Sgt. Elizabeth Palmer cost the county \$150,000 in a legal
28 settlement. Patrick Howard filed a complaint against Palmer for unprofessional

1 conduct after she detained, yelled and threatened to bar him from the South County
2 Courthouse for walking through the wrong metal detector. In alleged retaliation, she
3 arrested Howard, who worked for an attorney service, a few days later at the
4 courthouse. The charges were eventually dismissed, and Howard filed a lawsuit. As
5 far back as 2001, Palmer has faced internal complaints involving racial
6 discrimination and jokes. Recently, she's been the subject of two more civil rights
7 lawsuits; Specifically, that GORE conducted no investigation and condoned the
8 attack Plaintiff herein and condoned the false arrest and excessive force used against
9 her so that it gave a "green light" to Defendant ROSAS to go out and harm another
10 citizen, to wit: In or about April 2015 citizen Paul Rothstein was seated in his car
11 committing no crime when Defendant ROSAS approached him and demanded he roll
12 down his window or he would drag Mr. Rothstein out of the car and put him in the
13 hospital. Indeed, Defendant ROSAS dragged Mr. Rothstein – an engineer with no
14 criminal record - out of his car and falsely arrested him; Specifically, under GORE,
15 use of force complaints were up by 60 % from 2010 while there were no more arrests,
16 indicating a policy of condoning excessive force. As San Diego Sheriff Department's
17 policy maker, GORE knew the actions of the deputies were unconstitutional and
18 failed to take remedial action;

19
20 c. Failing to adequately train, supervise, and control police
21 officers in the arts of law enforcement;

22
23 d. Failing to adequately discipline police officers involved in
24 misconduct;

25
26 e. Condoning and encouraging police officers in the belief that
27 they can violate the rights of persons such as the Plaintiff in this action with impunity
28 and that such conduct will not adversely affect their opportunities for promotion and

1 other employment benefits.

2 f. GORE maintain a pattern and practice of not obtaining
3 timely reports from deputies involved in misconduct and allowing deputies to
4 collaborate with each other and supervisors when writing incident reports. GORE
5 was aware of repeated constitutional violations and failed to discipline deputies or
6 take corrective measure, such as re-training deputies or disciplining deputies.

7 13. Plaintiff is informed and believes and, on the basis of such information
8 and belief, alleges that Defendants COUNTY and GORE, and DOES 1-10 ordered,
9 authorized, acquiesced in, tolerated, or permitted Defendants DUNNING and ROSAS,
10 ROGERS and DOES 1-10 to engage in the unlawful and unconstitutional actions,
11 policies, practices, and customs set forth in the foregoing paragraph and ratified that
12 conduct.

13 14. Defendants DUNNING', ROSAS's and ROGERS' conduct alleged herein
14 constitutes a pattern of intimidation, illicit law enforcement behavior, and statutory
15 and constitutional violations based either on a deliberate plan by Defendants
16 COUNTY, and GORE, and DOES 1-10 or on Defendants COUNTY and GORE, and
17 DOES 1-10, deliberate indifference, gross negligence, or reckless disregard, to the
18 safety, security, and constitutional and statutory violations of Plaintiff and all persons
19 similarly situated.

20 21 15. Plaintiff is informed and believes, and on the basis of such
22 information and belief, alleged that Defendant COUNTY subsequently ratified the acts
23 and related acts of GORE, DUNNING, ROGERS and ROSAS, and DOES 1-10,
24 including the acts that are the subject of this lawsuit, against a number of persons
25 involved in this and other events by, amongst other things, its County officials failing
26 to take any actions in response to being fully informed of the actions of its deputies.

1 16. Plaintiff is informed and believes, and based on that on information and
2 belief, alleges that over a number of years San Diego Sheriff's Deputies have engaged
3 in a number of acts of misconduct that have been condoned, ignored, and otherwise
4 permitted to continue by the San Diego Sheriff's Department through its supervisors
5 and Defendant GORE. Some of these acts have been brought to the attention of the
6 San Diego Board of Supervisors, which consistently had chosen to do nothing about
7 them. Plaintiff is informed and believes and, on the basis of such information and
8 belief, alleges that it is well established that the COUNTY, have no intentions to stop
9 the ongoing misconduct by Sheriff Deputies.

10 17. Plaintiff is informed and believes and thereon alleges that each of the
11 Defendants designated as a DOE is intentionally and negligently responsible in some
12 manner for the events and happenings herein referred to, and thereby proximately
13 caused the injuries for the events and happenings referred to, and thereby proximately
14 caused the injuries and damages as herein alleged. The true names and capacities of
15 DOES 1 through 50, inclusive, and each of them, are not now known to Plaintiff who
16 therefore sued said Defendants by such fictitious names and will be added to this
17 action as provided by California Code of Civil Procedure §484.

18 18. Defendant COUNTY at all times herein mentioned is an agency of
19 Defendant is a "Person" subject to suit within the meaning of 42 U.S.C. §1983 under
20 *Monell v. Department of Social Services* (1978) 436 U.S. 685, 691. Under
21 California Government Code §815.2 Defendant COUNTY is liable for any and all
22 wrongful acts hereinafter complained of committed by any of the individual officer
23 Defendants.

24 19. All defendants are jointly and severally liable for all damages awarded
25 (except punitive damages). Under California Government Code section 825(a), the
26 CITY is obligated to pay any compensatory damages and costs awarded against

their employees.

GENERAL ALLEGATIONS

20. On October 11, 2013 defendants ROSAS, ROGERS and DUNNING were conducting speed enforcement stops West San Marcos Boulevard in the City of San Marcos. Defendant ROSAS was training Defendant DUNNING.

21. Defendant ROSAS claimed to have “visually” calculated Plaintiff’s car traveling 70 miles per hour in a 50 miles per hour zone and then claimed to have confirmed with his laser, which he wrote in his official report. In fact, Plaintiff was not traveling at that speed because there was a blockage in the road ahead of her involving another car and two other officers which would have prevented her from traveling at that pace.

22. Defendant ROSAS stepped into the road and flagged Plaintiff to pull over. Plaintiff complied. Plaintiff provided her driver's license, registration and proof of insurance to Defendant ROSAS as he requested. Defendant ROSAS told Plaintiff she had been speeding and wrote in his report that he showed Plaintiff his laser, which he never did. Plaintiff informed Defendant ROSAS that she was not traveling at the rate of speed he alleged, and requested that he provide his full name to her, which he declined to do.

23. Plaintiff asked Defendant ROSAS several times for his name and badge number, but he refused to respond to her inquiries. San Diego Sheriff's policy requires that deputies' nametags be visible at all times, and that deputies provide their names and badge numbers upon request from the public. Defendant ROSAS took Plaintiff's identifying information and walked back to his patrol car to write a ticket.

24. Defendant ROSAS, accompanied by defendants DUNNING and ROGERS returned to Plaintiff's car. Plaintiff had again asked Defendant ROSAS to provide his full name and badge number to her, which he declined to do. As Plaintiff reached with her forefinger to uncover Defendant's badge, which was hidden underneath a traffic safety vest, Defendant ROSAS forcefully grabbed Plaintiff's arm

1 and said, "That's it, you're going to jail," leaned his body into her car to unlock and
2 open it from inside, climbed into her car, forcibly grabbed her. Defendant ROGERS
3 grabbed Plaintiff under her armpit and defendants ROSAS and ROGERS together
4 dragged Plaintiff out of her car and dropped her to the ground. Defendant DUNNING
5 immediately handcuffed Plaintiff. Plaintiff had never actually touched the deputy's
6 vest.

7 25. During the initial contact with Defendant ROSAS, Plaintiff told him she
8 was disabled, that she had just had knee surgery and was pending hip replacement
9 surgery. The physical attack by defendants ROSAS, ROGERS, and DUNNING re-
10 injured Plaintiff's knee requiring her to put off her hip ~~replacement~~surgery so her
11 orthopedic doctor could perform surgery on the damage on her knee inflicted by the
12 deputy defendants. Plaintiff's handcuffs were so tight around her wrists that she had
13 numbness in her wrists for many months after the incident.

14 26. Plaintiff was arrested for a violation of California Penal Code sec. 243(b)
15 (Battery on a Peace Officer) and Penal Code sec. 148(a) (Resisting and Delaying and
16 Officer). Defendant DUNNING wrote the ticket and named Defendant ROSAS as the
17 victim. Neither Defendant ROSAS nor Defendant DUNNING issued Plaintiff a
18 speeding ticket. There was no probable cause to arrest Plaintiff on speeding, or the
19 Penal Code charges.

20 27. Plaintiff was dragged to a patrol car where she was placed in the back
21 seat. She was taken to the sheriff's substation where she underwent the indignity of
22 being photographed and fingerprinted. Defendants held Plaintiff for nearly three
23 hours. They did not provide her medical treatment, although she complained of severe
24 pain. Three hours after she was falsely arrested, Plaintiff was released on her on her
25 promise to appear in court.

26 28. Defendants ROSAS, DUNNING and ROGERS all drafted reports which
27 contained false descriptions of Plaintiff being agitated and non-compliant with
28 Defendant ROSAS. Defendants ROSAS, DUNNING and ROGERS each falsified their

1 reports to state that Plaintiff had reached out and grabbed Defendant ROSAS vest,
2 which she did not do, in order to cover up their false arrest and excessive force
3 perpetrated on Plaintiff.

4 29. In November 2013 a criminal complaint was filed by the San Diego
5 District Attorney's office charging Plaintiff with a violation of Penal Code sec. 243(b)
6 and 148(a). The Office of the District Attorney thereafter dismissed all charges
7 against Plaintiff.

8 **FIRST CAUSE OF ACTION**

9 **42 U.S.C. § 1983 - Unlawful Seizure, Arrest, and Detention**
10 **(Against Defendants DUNNING, ROSAS and, and DOES 1-25)**

11 30. Plaintiff hereby incorporates the preceding paragraphs by reference as
12 though each were set forth herein in full.

13 31. The Fourth Amendment to the United States Constitution states:

14 The right of the people to be secure in their persons, houses, papers,
15 and effects, against unreasonable searches and seizures, shall not be
16 violated, and no warrants shall issue, but upon probable cause,
17 supported by oath or affirmation, and particularly describing the place
to be searched, and the persons or things to be seized.

18 32. On October 11, 2013, SDSO deputies ROSAS, DUNNING and
19 ROGERS and DOES 1-10 illegally seized, detained, and arrested Plaintiff without
20 probable cause, reasonable suspicion, and/or a warrant. In so doing, the SDSO
21 deputy Defendants deprived Plaintiff of her constitutional rights under the Fourth
22 Amendment to the United States Constitution.

23 33. In committing the acts and omissions alleged herein, the SDSO
24 deputy Defendants acted in the course and scope of their employment, and thereby
25 acted under color of law. At no time did Plaintiff give valid consent to
26 Defendants' unlawful actions, and the rights Defendants were violating were
27 clearly established.

28 34. In committing the acts and omissions alleged herein, the SDSO

1 deputy Defendants acted with malice, oppression and fraud. Accordingly,
2 Plaintiffs are entitled to obtain punitive damages from SDSO Officer Defendants in
3 an amount sufficient to punish and deter such conduct, according to proof at the
4 time of trial.

5 **SECOND CAUSE OF ACTION**

6 **42 U.S.C. § 1983 – Excessive Force**

7 **(Against Defendants ROSAS, DUNNING, ROGERS and DOES 1-10)**

8 35. Plaintiff hereby incorporates the preceding paragraphs by reference as
9 though each were set forth herein in full.

10 36. In effectuating their unlawful arrest and/or detention of
11 Plaintiff, defendants ROGERS, ROSAS and DUNNING, and DOES 1-10 used
12 unreasonable and excessive force upon Plaintiff when they grabbed her by her
13 arms, dragged her out of her car and dropped her on the ground, handcuffed her,
14 lifted her off her feet, and dragged her to the patrol car, after they injured her knee
15 and hip preventing her from being able to walk without assistance.

16 37. Even if the arrest of Plaintiff had been legal, which it was not, the
17 means used by SDSO deputy Defendants to effectuate the arrest constituted
18 excessive force and unreasonable force, thereby violating Plaintiff's clearly
19 established rights under the Fourth and Fourteenth Amendments of United States
20 Constitution.

21 38. In effectuating their unlawful arrest and/or detention of Plaintiff
22 BANA MOUWAKEH on October 11, 2013, SDSO Officer Defendants used
23 unreasonable and excessive force upon Plaintiff when they grabbed her by her
24 arms, dragged her out of her car and dropped her on the ground, handcuffed her,
25 lifted her off her feet, and dragged her to the patrol car, after they injured her knee
26 and hip preventing her from being able to walk without assistance.

27 39. Even if the arrest of Plaintiff had been legal, which it was not, the
28 means used by SDSO deputy Defendants to effectuate the arrest constituted

1 excessive force and unreasonable force, thereby violating Plaintiff's clearly
2 established rights under the Fourth and Fourteenth Amendments of United States
3 Constitution.

4 40. At no time did Plaintiff give valid consent to any of SDSO deputy
5 defendants' unlawful actions described herein. Plaintiff further alleges that
6 all defendants acted in the course and scope of their employment with the SDSO,
7 thereby acting under color of law.

8 41. Plaintiff suffered pain, tenderness, discomfort, and contusions, as a
9 result of being aggressively dragged out of the car and dropped on the asphalt.
10 Additionally, the force used against her when she was dropped on the asphalt was
11 so severe it reinjured a knee that had recently been operated on requiring her to
12 have a second knee surgery to repair damage done by the excessive force.
13 Furthermore, a scheduled hip replacement surgery had to be put off in order to
14 accommodate the emergency knee repair surgery required as a result of the injuries
15 sustained when the Defendant deputies used excessive force. Also, Plaintiff
16 sustained numbing of her hands as a result of the handcuffs being placed too tightly
17 on her wrists.

18 42. At no time could a reasonable officer in the position of SDSO deputy
19 Defendants have believed that Plaintiff posed a threat either to the officers or
20 anyone else, nor could a reasonable officer have believed that the amount and
21 degree of force SDSO deputy Defendants employed was reasonably necessary to
22 effectuate an arrest.

23 43. As such, the degree of force SDSO Deputy Defendants used against
24 Plaintiff was without probable cause, reasonable grounds, or other justification,
25 thereby violating Plaintiff's dignity and bodily integrity, invading their privacy,
26 and proximately and foreseeably causing them damage, injury, and loss.

27 44. Moreover, since no force of any kind was justified, SDSO deputy
28 Defendants' use of any force against Plaintiffs was a *per se* violation of their

constitutional rights.

45. In committing the acts alleged herein, SDSO deputy Defendants acted with malice and oppression. Plaintiff therefore is entitled to punitive damages against SDSO deputy Defendants in an amount sufficient to punish and deter such conduct, according to proof at the time of trial.

THIRD CAUSE OF ACTION

RETALIATION FOR EXERCISE OF FIRST AMENDMENT

(Against Defendants ROSAS, DUNNING, ROGERS and DOES 1-10)

46. Plaintiff hereby incorporates the preceding paragraphs by reference as though each were set forth herein in full.

47. During the time of the initial traffic stop, Plaintiff informed Deputy ROSAS that she had not been speeding, and that she was driving with the flow of traffic. She also informed him she was disabled, in that she had just had a knee operation and was pending a hip replacement surgery so that it was difficult for her to speed even had she wished to do so. She repeatedly asked that ROSAS identify himself, as he had no nametag visible, as is mandated by San Diego Sheriff's Department policy and procedures. ROSAS refused to provide his name to her or reveal his hidden nametag, took her license, and walked away to consult with DUNNING and ROGERS.

48. Upon returning to the car, Plaintiff again demanded that ROSAS identify himself, which he repeatedly refused to do. When Plaintiff reached towards ROSAS to uncover his hidden badge, ROSAS grabbed Plaintiff and dragged her out of the car in retaliation for her speech.

49. Those SDSO Officer Defendants named in this cause of action who conspired with, verbally encouraged, and/or aided and abetted, and/or witnessed SDSO Deputy ROSAS and were in a position to stop the violation of Plaintiff's rights but failed to do so are also liable for the violation of Plaintiffs' First Amendment rights.

50. In committing the acts alleged herein, SDPD Officer Defendants acted with malice and oppression. Plaintiff therefore is entitled to punitive damages against SDSO deputy Defendants in an amount sufficient to punish and deter such conduct, according to proof at the time of trial.

FOURTH CAUSE OF ACTION

Monell Claim – 42 U.S.C. § 1983

**(Against Defendant COUNTY, San Diego Sheriff BILL GORE and DOE
SDSO Policy Making Defendants)**

51. Plaintiffs hereby incorporate the preceding paragraphs by reference as though each were set forth herein in full.

52. As set forth herein above, the SDSO deputy Defendants violated a number of Plaintiff's constitutional rights. These included violations of the First, Fourth and Fourteenth Amendments to the Constitution of the United States. These actions by SDPD Officer Defendants were part of a wider pattern and practice that was approved and encouraged by the SDPD.

53. The physical abuse and meritless arrest of citizens such as Plaintiff were consistent with the custom and practice endorsed, promulgated, and/or tolerated by former San Diego Sheriff and all supervisory DOE Defendants with final policy-making authority.

54. This custom and practice, and the ratification by the supervisory Defendants with final policy-making authority named herein of the illegal actions performed by rank-and-file SDSO deputies pursuant to this policy, was the moving force behind the SDSO deputy Defendants' violation of Plaintiff's rights that occurred on October 11, 2013.

55. Accordingly, the COUNTY is liable for the deprivation of Plaintiff's constitutional rights by the SDSO deputy Defendants under *Monell v. Department of Social Services of the City of New York* (1978) 436 U.S. 658, and its progeny, which hold that a municipal entity may be held liable for violations of

1 Constitutional rights committed by its law enforcement officers if the violation was
2 based on either: (1) a widespread practice that, although not authorized by written
3 law or express municipal policy, is “so permanent and well settled as to constitute
4 a custom or usage” with the force of law, or, (2) the fact that the illegal and
5 unconstitutional conduct was ratified by an individual with final policy-making
6 authority.

7 56. Here both bases for municipal liability are present.

8 57. First, Plaintiff is informed and believes, and thereon allege, that the
9 SDSO had a departmental policy, custom, or practice (which was promulgated,
10 encouraged, and/or tolerated by the Defendants named herein, to wit, SDSO
11 supervisors and those with policy-making authority) of harassing and physically
12 abusing citizens, and arresting them without probable cause in violation of these
13 individual’s civil rights.

14 58. The decision to illegally arrest Plaintiff on October 11, 2013, was part
15 and parcel of the illegal behavior encouraged by Defendant San Diego Sheriff
16 GORE, and all supervisory DOE Defendants with final policy-making authority.

17 59. Second, when confronted with the illegal arrest of, and excessive
18 force used against Plaintiff, Defendants and all supervisory DOE SDSO
19 Defendants with final policymaking authority, not only failed to take corrective
20 action, but also ratified the illegal conduct of the SDSO deputy Defendants and
21 other DOE Defendants.

22 60. Overall, the pattern and practice of the SDSO and of the individuals
23 with final policymaking authority within it (including, but not limited to, former
24 San Diego Sheriff GORE and all supervisory DOE Defendants with final policy-
25 making authority) was such that there was a permanent and settled culture, policy,
26 and/or practice, which encouraged the false arrest and imprisonment of, and the use
27 of excessive force against, citizens like Plaintiff. This pattern and practice was a
28 substantial factor in causing the injuries and damages suffered by Plaintiff in the

1 incident alleged herein.

2 **FIFTH CAUSE OF ACTION**

3 **Failure to Properly Train – Violation of 42 U.S.C. § 1983**
4 **(Against Defendant COUNTY, San Diego Sheriff GORE, and DOE SDSO**
5 **Policy Making Defendants)**

6 61. Plaintiff re-alleges all prior paragraphs of this Complaint and
7 incorporate said paragraphs herein by reference.

8 62. Defendants, San Diego Sheriff GORE and all supervisory and/or
9 policy-making SDSO DOE Defendants, as a matter of custom, practice, and policy,
10 failed to maintain adequate and proper training as to the Constitutional rights of
11 citizens and arrestees, to prevent the consistent and systematic arrests without
12 probable cause, the use of excessive force, the falsifying of reports, and extra-
13 judicial punishment by SDSO deputies.

14 63. Defendants, San Diego Sheriff GORE and all supervisory and/or
15 policy-making SDSO DOE Defendants failed to provide adequate training to their
16 deputies on the requirement that citizens only be arrested based on probable cause
17 or a valid warrant.

18 64. Defendants, San Diego Sheriff GORE and all supervisory and/or
19 policy-making SDSO DOE Defendants failed to provide adequate training to their
20 deputies on the appropriate, reasonable, and/or legally permissible amount of force
21 that may be used when effectuating an arrest.

22 65. Defendants San Diego Sheriff GORE and all supervisory and/or
23 policy-making SDSO DOE Defendants failed to provide adequate training to their
24 deputies on the subject of police reports: to wit, they failed to properly train their
25 offices in the SDSO that officers must file truthful and complete reports that do not
26 contain false statements and/or omissions of material facts.

27 66. At the time Defendants San Diego Sheriff GORE and all supervisory
28 and/or policy-making SDSO DOE Defendants failed to properly train their

1 subordinate deputies, they knew, or in the exercise of care should have known, that
2 their failure to properly train their deputies was likely to result in citizens of the
3 County of San Diego suffering the exact type of violations of their Constitutional
4 rights which Plaintiff suffered in this case.

5 67. Therefore, Defendants San Diego Sheriff GORE and all supervisory
6 and/or policy-making SDSO DOE Defendants with deliberate indifference,
7 disregarded a duty to protect the public from official misconduct.

8 68. The failure by Defendants San Diego Sheriff GORE and all applicable
9 SDPD DOE Defendants, to promulgate or maintain constitutionally adequate
10 training was done with deliberate indifference to the rights of Plaintiff and others in
11 her position.

12 69. The constitutionally infirm lack of adequate training as to SDSO
13 deputy Defendants, all law enforcement officers, caused Plaintiff to suffer the
14 damages alleged herein.

15 70. As a result of actions of Defendants San Diego Sheriff GORE and all
16 supervisory and/or policy-making SDSO DOE Defendants and all applicable SDSO
17 DOE Defendants, Plaintiff suffered the physical, economic and psychological
18 injuries alleged herein.

19 71. As a direct consequence of the failure of Defendants San Diego
20 Sheriff GORE and all supervisory and/or policy-making SDSO DOE Defendants to
21 properly train their deputies, Plaintiff was falsely arrested, SDSO deputy
22 Defendants used excessive force against her, SDSO deputy Defendants retaliated
23 against Plaintiff for exercising her First Amendment rights, and the SDSO Deputy
24 Defendants named herein filed false and misleading police reports with respect to
25 Plaintiff. These acts and omissions by Defendants, and each of them, were legal
26 cause of the injuries and damages to Plaintiffs as herein alleged.

27 **SIXTH CAUSE OF ACTION**

28 **Failure to Supervise and Discipline – Violation of 42 U.S.C. § 1983**

**(Against Defendant COUNTY, San Diego Sheriff GORE, and DOE SDPD
Policy Making Defendants)**

72. Plaintiff re-alleges all prior paragraphs of this Complaint and incorporate said paragraphs herein by reference.

73. Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants, as a matter of custom, practice and policy, failed to supervise their officers to prevent, deter, and punish the unconstitutional and excessive use of force.

74. No supervising and/or policy-making officer from the SDSO took appropriate steps to supervise and control the SDSO deputy Defendants during their arrest of Plaintiff and/or when they filed their subsequent false police reports.

75. Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants knew or should have known of the Constitutional violations committed by SDSO deputy Defendants against Plaintiff, but failed to correct their officers' abuse of authority, or discourage their unlawful use of authority.

76. Upon information and belief, Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants witnessed or learned of the violations committed against Plaintiff, but failed to supervise or discipline the SDSO deputy Defendants named herein for their misconduct with respect to Plaintiff.

77. To the contrary, Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants, condoned and/or acquiesced in the abusive, illegal, and unconstitutional behavior of the SDSO deputy Defendants named herein toward Plaintiff by refusing to discipline the SDSO deputy Defendants, re-train them, or otherwise correct their abusive behavior.

78. Upon information and belief, the SDSO deputy Defendants named herein, including SDSO DOE Defendants, were never disciplined for their unconstitutional treatment of Plaintiff on October 11, 2013, 2013.

79. Defendants San Diego Sheriff GORE and all applicable SDSO DOE

Defendants were aware that their deputies arrested Plaintiff without probable cause and that the charges against Plaintiff were dropped.

80. Defendants, San Diego Sheriff GORE and all applicable SDSO DOE Defendants were, or should have been, aware that the SDPSO policy regarding supervision and discipline of officers who violated the civil rights of the citizens and commit assault and battery was so inadequate that it was obvious that a failure to correct it would result in further incidents of dangerous and lawless conduct perpetrated by their officers.

81. Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants, ratified the actions of SDSO deputy Defendants by failing to discipline them and failing to advise the prosecuting attorney that the facts alleged in the officers' reports were false.

82. The constitutionally deficient investigation and lack of discipline was done with deliberate indifference to the rights of Plaintiff.

83. The lack of adequate supervision and discipline by Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants caused Plaintiffs' damages.

84. As a result of actions by Defendants San Diego Sheriff GORE and all applicable SDSO DOE Defendants Plaintiff suffered the injuries and damages alleged herein.

85. Defendants San Diego Sheriff GORE and all applicable SDSO DOE and all supervisory and policy-making DOE Defendants, are liable because they aided and abetted and/or ratified the conduct of SDSO deputy Defendants that violated Plaintiff's First, Fourth and Fourteenth Amendment rights. The acts and omissions of Defendants, and each of them, were a proximate and substantial cause of the injuries and damages alleged herein by Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- (1) For general and special compensatory damages (including direct, indirect, and emotional damages), presumed damages, and nominal damages, against all Defendants, in an amount to be determined by the trier of fact.
- (2) For punitive and exemplary damages against all defendants except the COUNTY and in an amount to be determined by the trier of fact.
- (3) For past and future medical expenses, in an amount to be determined by the trier of fact;
- (4) For reasonable attorney's fees and costs and expenses of litigation, pursuant to 42 United States Code sections 1983-1988, and any and all other relevant statutory or case law.
- (5) For any and all other relief, including interest and/or injunctive relief, to which Plaintiff may be entitled under law or equity and which this Court may determine is appropriate under the facts of this case.

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a jury trial on each and every cause of action set forth in her Complaint.

Dated: April 9, 2016

By: /s/ Mary Frances Prevost
MARY FRANCES PREVOST
Attorneys for Plaintiff
BANA MOUWAKEH